

STATEMENT OF EMERGENCY
902 KAR 30:210E

This emergency administrative regulation is being promulgated to establish actions that the Department for Public Health may take in response to a declared national or state emergency. These actions include enhancing early intervention services to include tele-intervention delivery methods. The early intervention program must operate in compliance with the requirements under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1434-1444. The Office of Special Education Programming (OSEP) has offered guidance to states on implementation of IDEA Part C service provision in the current COVID-19 environment. This guidance includes the use of telephone and video conferencing methods for service delivery. Because the global pandemic caused by COVID-19 is ongoing, this emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to address the imminent threat to public health. This emergency administrative regulation will be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor
ERIC FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(New Emergency Administrative Regulation)

902 KAR 30:210E. Enhanced early intervention services in response to declared national or state public health emergency.

EFFECTIVE: March 5, 2021

RELATES TO: KRS 200.650-200.676, 34 C.F.R. Part 99, 34 C.F.R. Part 303, 45 C.F.R. Part 160, 20 U.S.C. 1431-1444

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions for providing tele-intervention services if a national or state public health emergency has been declared.

Section 1. Definitions. (1) “Declared national or state public health emergency” means a formal declaration by the President of the United States or the Governor of Kentucky of an extraordinary event that is determined to constitute a public health risk through the spread of disease.

(2) “Tele-intervention service” means early intervention services provided through the internet with both video and audio features and with the early intervention provider and family both present in real time.

Section 2. Enhanced early intervention services in response to a declared national or state public health emergency. (1) Early intervention services and requirements may be enhanced to allow for tele-intervention services if a national or state public health emergency has been declared.

(2) Early intervention services that are otherwise designated as face-to-face in accordance with 902 KAR 30:160 may be provided through tele-intervention with informed parental consent if:

(a) Informed parental consent is obtained verbally for the purposes of tele-intervention services;

(b) Written consent is received by the point of entry within ten (10) days of the verbal consent; and

(c) The date verbal consent is obtained is documented in the child's electronic record.

(3) Providers utilizing tele-intervention services shall take all necessary steps to maintain confidentiality with 34 C.F.R. Part 99, 34 C.F.R. 303.402, and 45 C.F.R. Part 160.

(4) Tele-intervention services shall be reimbursed at the usual and customary rate as established in 902 KAR 30:200, Section 2.

(5) Tele-intervention services shall revert to face-to-face service delivery methods following the end of the declared national or state public health emergency.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 3, 2021

FILED BY LRC: March 5, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 26, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 19, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows for the continuation of early intervention services through tele-intervention methods during a declared national or state public health emergency

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure early intervention services continue to be provided during times of a national or state public health emergency when traditional face-to-face service delivery methods may not be available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.660(7) authorizes the cabinet to develop procedures to ensure that early intervention services identified on the individualized family service plan are provided to eligible infants and toddlers with disabilities and their families in a timely manner. KRS 200.660(5) authorizes the cabinet to enter into contracts with service providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will help to ensure early intervention services can continue by allowing alternative methods for service delivery during the declared national or state public health emergency.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 5,400 children receiving early intervention services statewide. There are approximately 1,300 enrolled early intervention providers, including service coordinators.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Providers electing to provide services through tele-intervention methods will need to obtain and document informed parental consent for the service delivery method. In addition, providers will need to ensure the voice and video over the internet protocol used for tele-intervention services meets the confidentiality requirements of 34 C.F.R. Part 99, 34 C.F.R. Part 303, and 45 C.F.R. Part 160. Parents will need to make themselves available for the tele-intervention service delivery method, and give informed consent for same.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs of providing early intervention services through tele-intervention methods is unknown at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children and families will continue to receive needed early intervention services. Providing services through tele-intervention methods helps to ensure a continuity of services during a declared national or state public health emergency. There has been much published about the importance of sticking to a routine, especially for families with young children. Tele-intervention services will help families to continue with these daily routines while protecting all individuals from any potential exposure to any illnesses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no ongoing costs for implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department for Medicaid Services has issued an administrative regulation, 907 KAR 3:300, that allows reimbursement for telehealth methods of service delivery for services designated as face-to-face services. That will allow the department to seek Medicaid reimbursement for early intervention services provided through tele-intervention methods. Other sources of funding include private insurance for reimbursement, and state and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation will affect all families and providers equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Division of Maternal and Child Health within the Department for Public Health, and the Department for Medicaid Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 200.660, 34 C.F.R. Part 99, 34 C.F.R. Part 303, 45 C.F.R Part 160, 20 U.S.C. 1431-1444.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will have no impact on costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will have no impact on costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. Part 99, 34 C.F.R. Part 303, 45 C.F.R. Part 160, and 20 U.S.C. 1431-1444

2. State compliance standards. Parents of children enrolled in early intervention services have certain rights as protected by the Individuals with Disability Education Act and the Family

Education Rights and Privacy Act. The state must ensure all services are provided in compliance with these standards. As a business associate of the Department for Public Health, early intervention providers must ensure compliance with the Health Insurance Portability and Accountability Act of 1996 for the submission of electronic billing records.

3. Minimum or uniform standards contained in the federal mandate. In order to receive early intervention funding, the state must assure the federal Office of Special Education Programs compliance with the requirements for parental consent, prior written notice, and the confidentiality of the early intervention record. The state must also ensure the early intervention record is in compliance with the Health Insurance Portability and Accountability Act of 1996.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, the requirements of this administrative regulation are consistent with the requirements of 34 C.F.R. Part 99, 34 C.F.R. Part 303, and 45 C.F.R. Part 160.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as no stricter standard, or additional or different responsibilities or requirements are imposed.